

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION**

RAFAEL O. VILLAREAL, et al. *

Plaintiffs *

vs. *

Civil Action No. JFM 02-1667

WALTON TECHNOLOGY, INC., et al. *

Defendants *

* * * * *

MOTION FOR APPROVAL OF SETTLEMENT FOR MINORS

The minor plaintiffs, Sylvia Rosa Barrientos and Marco Celim Barrientos Ortiz by Rafael O. Villareal, next friend, by their attorneys, Stuart M. Salsbury, Salsbury, Clements, Bekman, Marder & Adkins, L.L.C. and William R. Bacon, Jr., move this Honorable Court to approve a settlement in the above captioned matter and state for their reasons the following:

1. That on October 19, 2000, Marco C. Barrientos, father of Silvia Rosa Barrientos and Marco Celim Barrientos Ortiz, was working as a painter on a lead paint remediation project at the Chesapeake City Bridge in Chesapeake City, Maryland when the containment system, known as a "sail system" collapsed and caused his death.
2. That Silvia Rosa Barrientos, born on July 15, 1989, is currently 14 years old and living in the country of Guatemala with great aunt.
3. That Marco Celim Barrientos Ortiz, born on Novembre 12, 1993, is currently 10 years old and is living in the country of Guatemala with his birth mother.
4. That as a result of the death of Marco C. Barrientos, wrongful death claims

were brought on behalf of each of the minor children by Rafael O. Villareal, as next friend in the above captioned action.

5. That a settlement agreement has been reached with all parties to the case, including the claims of the minor children, Sylvia Rosa Barrientos and Marco Celim Barrientos Ortiz (a copy of the settlement agreement and mutual release is attached hereto as Exhibit 1).

6. That to reach this settlement agreement extensive settlement negotiations were held among the various parties in the case and numerous settlement conferences were held before The Honorable Paul W. Grimm, United States Magistrate Judge for the District of Maryland. Because of the insurance limits involved and because of the multiple parties involved, there was considerable discussion and time taken to reach an equitable division of the settlement proceeds.

7. That the total settlement for Sylvia Rosa Barrientos is \$307,350.00, of which \$155,565.00 has been utilized to purchase an annuity from CNA which will pay her the following future benefits:

(a) Monthly payments to Sylvia Rosa Barrientos - starting January 10, 2008, One Thousand One Hundred Dollars (\$1,100.00) per month payable for 144 months (12 years) certain and guaranteed.

(b) Lump sum payments to Sylvia Rosa Barrientos, deferred certain and guaranteed payments to be made in the following amounts and at the following times:

(1) Nine Thousand Dollars (\$9,000.00) paid on January 10, 2008

- (2) Nine Thousand Dollars (\$9,000.00) paid on January 10, 2012
- (3) Nine Thousand Dollars (\$9,000.00) paid on January 10, 2015
- (4) Nine Thousand Dollars (\$9,000.00) paid on January 10, 2017
- (5) Fifty Thousand Dollars (\$50,000.00) paid on January 10, 2020

8. That the total settlement for Marco Celim Barrientos Ortiz is \$307,350.00, of which \$155,450.00 has been utilized to purchase an annuity from CNA which will pay

him the following future benefits:

(a) Monthly payments to Marco Celim Barrientos Ortiz - starting January 10, 2012, One Thousand Five Hundred Dollars (\$1,500.00) per month payable for 144 months (12 years) certain and guaranteed.

(b) Lump sum payments to Marco Celim Barrientos Ortiz, deferred certain and guaranteed payments to be made in the following amounts and at the following times:

- (1) Eleven Thousand Dollars (\$11,000.00) paid on January 10, 2012
- (2) Eleven Thousand Dollars (\$11,000.00) paid on January 10, 2016
- (3) Eleven Thousand Dollars (\$11,000.00) paid on January 10, 2019
- (4) Eleven Thousand Dollars (\$11,000.00) paid on January 10, 2021
- (5) Fifty Thousand Dollars (\$50,000.00) paid on January 10, 2024

9. That a structured settlement annuity has been selected as a means for part of the payment of the settlement in this case for the following reasons:

- (a) To protect the fund of each child during his minority;

- (b) To set up a period of payments over a course of time once the children reach the age of majority to protect the assets from being squandered;
- (c) To provide a steady stream of income for them in their early adulthood while still giving them an incentive to work and earn money on their own;
- (d) To give them time in their early adulthood to learn how to handle money over a period of time since they will not have the benefit of counsel of their father;
- (e) To have money paid to them over a period of time in the United States to protect them from the political uncertainties that exist in the country of Guatemala;
- (f) To protect the money that they receive from creditors, friends and relatives while they are minors and during their early adulthood;
- (g) To provide them a steady stream of money over the period of their early adulthood that will allow them to live at a reasonably good standard of living in their native country of Guatemala;
- (h) That the annuity can be used in lieu of a trust vehicle and will give them certainty as to payments of sums in the future;
- (g) That because the annuity is under \$300,000.00, that in the event the annuity company would go into bankruptcy, the sums of the annuity would be paid in full by the Maryland Guarantee Fund.

10. That in addition to the monies that the children are receiving as a part of this settlement, there are monies in the Estate of Marco C. Barrientos which will be held

in trust for the children and distributed to them over time and will provide for them funds during their minority.

11. That out of the recovery on behalf of the minor children, pursuant to the fee agreement signed prior to the undertaking of the case, attorney's fees in the amount of 40% of the gross amount recovered will be deducted from the settlement as well as a pro rata share of costs of \$817.91 per child.

12. That the remaining settlement proceeds in cash will be deposited in a trust account for each child pursuant to Maryland Code, Estates and Trust Article, §13-401 et seq. covering recoveries by minors in tort.

13. That counsel for the minor children believes that the foregoing settlement for the minor children is fair and reasonable and in their best interests and will afford the greatest protection of their interests.

14. A Maryland Workers' Compensation claim (B508930) was filed on behalf of these two minor children and the Commission ruled that they were partial dependents of the decedent and the sum of \$21,625.00 has been tendered by Zurich American Insurance Company on behalf of each child. Accordingly, the short-term needs of the minor children can be met with the funds referred to in this paragraph. Additionally, the lien of Zurich will be satisfied from the settlement proceeds in this case.

15. For the foregoing reasons, the motion to approve the settlement for the minor children in this case should be granted.

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REQUEST FOR HEARING

The minor plaintiffs, Sylvia Rosa Barrientos and Marco Celim Barrientos Ortiz by Rafael O. Villareal, next friend, by their attorneys, Stuart M. Salsbury, Salsbury, Clements, Bekman, Marder & Adkins, L.L.C. and William R. Bacon, Jr., requests a hearing before this Honorable Court on their Motion for Approval of Settlement for Minors.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of June, 2004, a copy of the foregoing Motion for Approval of Settlement for Minors and Request for Hearing was mailed, first class, postage prepaid to the following:

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